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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,100	06/25/2003	James M. Odom	MOD033	4189
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MICHAEL O. SCHEINBERG			EXAMINER	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/606,100

Applicant(s)

ODOM ET AL.

Examiner

Adetokunbo O. Torimiro

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4, 5, 8, 13, 15, 16, 19 and 28-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 5, 8, 13, 15, 16, 19, and 28-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. The amendment received on 09/17/2007 has been considered. It has been noted that claims 1,28, and 31-34 have been amended. New claim 39 is added.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1,4,5,8,13,15,16,19,28,29, and 31-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hannan (US 2004/0029627) in view of Champion (US 4,962,950).

Re claims 1,4,5,8,13,19,28,29,31-37, and 39: Hannan teaches a method of lottery wagering on a phased competition (see par 11) having the steps of determining a number of participants from a pre-qualifying event of a phased competition based on rankings (see pars. 11-12, 52), assembling concluding data such as rankings for final participants of a final event (see par. 51), determining at least one winner of the final event based on the concluding data (see par. 51), collecting and correlating the concluding data of a winner of the event with the pre-qualifying data of the winner (see pars. 51-52), and determining the winning lottery data based on the collecting/correlating step (see pars. 51-52). With regard to the pre-qualifying data, the preliminary participants, and the pre-qualifying event, Hannan'627 discloses that the winning criteria are established by the outcome of "an actual scheduled sporting event or series of events" like a golf tournament or auto race (see pars. 11 and 14). The pre-qualifying data as described in

Hannan'627 are the rankings of participants entering the current event, wherein the participants of the event could be a subset of a larger group that contains participants that did not qualify for the current event due to a low ranking. For instance, in entering a tournament such as a tennis, golf, basketball, or football tournament, certain teams or individuals will have rankings from regular season play or a qualifying event, which aids in the seeding of the teams or individuals and helps determine which individuals will be allowed to enter the tournament. Therefore, Hannan'627 discloses a phased competition with a pre-qualifying event, preliminary participants, pre-qualifying data, concluding data, final participants, and a final event. Hannan'627 also discloses the collecting and correlating of data with regards to participants (see pars. 11-12 and 51-52). Hannan'627 also discloses a player of the lottery wagering method providing wagering data selecting, either randomly or manually, the participants they believe will finish in a certain subset of winning participants of the final event (see pars. 47, 50, 57, and 75). The player makes the wagering selections with a lottery distributor over a communication link of a computer network, the Internet, landline telephony, or other forms of communication (see pars. 39-42, 75 and 76). Hannan'627 discloses that the wagering data submitted by the player is compared to the winning lottery data and that the player is awarded a prize for making all or some of the correct selections in the lottery (see pars. 11-13 and 51-52). Hannan'627 discloses that the player can change the wagering selections before the conclusion of the final event (see par. 48). Hannan'627 also discloses the method being applied to the sport of auto racing, wherein the "pole" position or ranking would be used as a pre-qualifying event's wagering numbers, and the determination of the lottery numbers would be the "pole" position of the winning participants (see par. 14). Hannan'627 finally discloses a system with a distributor with a storage medium, a means for

correlating data, a communication link to the player of the lottery game (including through a computer network or the Internet), a hub (or server) for sharing information between distributors, and a communication link to the hub for receiving game information (see pars. 39-42, 75 and 76).. The system as described in Hannan'627 includes a processor unit and memory that stores the method as a computer program (see pars. 39-42, 75 and 76); winning lottery numbers are determined by the outcome of a competition involving multiple participants (see par.0051).

However, Hannan'627 does not explicitly disclose the steps of assigning a random number to the final participants, correlating the concluding data of a winner to the random number assigned to the winner, and the random numbers being assigned to the final participants after accepting the wager; accepting the wagers from the wagerers, so that the wagerers do not know which participants are associated with the picked numbers when they are picked.

However, Hannan'627 does appear to suggest that it is desirable in at least one embodiment that a player's wager of picked numbers be randomized. This is evidenced in paragraph 75 by stating that a wagerer's selections can be made by a random number generator as part of a "quick pick" option. In other words, Hannan'627 suggests that in one embodiment, there is no element of skill involved and that mere chance determines if a wagerer wins the lottery or not. It appears that this feature is desirable to allow gamblers who know nothing about sports to be involved by making random selections much like a standard lottery. Additionally, Hannan'627 teaches that typical lotteries are determined randomly providing no knowledge to the user that would allow them to use skill in determining the results of the lottery before it takes place. Hannan'627 teaches that this is achieved through randomizing the results, randomizing the wagers (through "quick pick" options). By randomizing game information, skill is eliminated.

While Hannan'627 proposes an alternative to these wagering techniques by allowing a user to make number selections based on skill, Hannan'627 has also suggested that randomization may be desirable to attract certain players. Therefore, it should be noted that Hannan'627 does not teach away from providing randomization in the method instead of skill as means for allowing a randomized lottery are disclosed.

Champion teaches accepting the wagers from the wagerers, so that the wagerers do not know which participants are associated with the picked numbers when they are picked (see abstract).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Hannan'627 with a randomization of the numbers associated with the final participants of a final event without knowledge of the wagerer (after a wagerer has made a selection) and using these random numbers to determine a winning wager, as it is suggested in the description of typical lotteries for the purpose of providing a lottery game that does not require skill but is related to how participants perform in a sporting event, thereby increasing the number of players who may be interested in the game. By providing randomization of numbers associated with the final participants instead of known ranks, randomness is achieved, skills eliminated, and Hannan'627 still achieves the objective of having the winning numbers being determined by the results of a sporting event.

Re claims 15,16, and 38: Hannan'627 teaches all the features of the present invention, but does not explicitly disclose entering a player's wager into a second lottery phase based upon the outcome of the comparing step. Hannan'627 does teach that the lottery method could be applied

to a tournament such as a golf tournament, tennis tournament, or a bass fishing tournament (see par. 11). It is well known that tournaments are competitions in which winners continue to the next round of play (phase) while losers are excluded. As a tournament is a single competition but there are phases of that competition, it is understood that the phases of a lottery correspond with the phases of the tournament. Therefore, Hannan⁶²⁷ suggests that the player's wager could be entered repeatedly within a single tournament competition, wherein a lottery result is obtained during each phase of the competition. Whether the entry is allowed to be entered into the next phase of the lottery, which corresponds with the next phase of the tournament competition, is dependent on the comparison step of the first phase of the lottery. This is apparent from the fact that as a tournament progresses, the subset of participants decreases and valid lottery numbers for the first phase may not be included in the second phase. Therefore, only wagers that have valid numbers for the second phase after the comparison step are allowed to continue. It can be said then, that repeating a wager in a second lottery phase is taught and suggested by Hannan⁶²⁷ through the use of a tournament as a competition on which the lottery is based. Providing wagering on tournaments in this fashion would allow for more wagers to be placed for a single competition, increasing gameplay and revenue opportunities.

Alternatively, a player could simply place the same wager in a second phase of a tournament based on the outcome of the first phase of the tournament, wherein the outcome determines whether a player has sufficient means to place a wage; on the second phase of the lottery and/or tournament. Providing such a second entry requires no consideration by the wagerer as the wager does not need to be changed between the first lottery phase and the second

lottery phase so long as all participants of the first lottery phase wagered on are in the second lottery phase. This may be done to quicken the pace of the game.

In other words, a player's wager can be repeated within a number of different competitions, such as lotteries as described above and in the previous action, or through repetition of a wager. Furthermore, even if Hannan'627 may not explicitly disclose such a wager on second phase of a lottery, it would have been obvious at the time the invention was made to perform these functions as suggested by Hannan'627 of providing lottery play based on phases of tournaments to allow more opportunities for players to place wagers and increase the distributors income. Since Hannan'627 discloses second phase wagers or are obvious, wagering data could be determined by the same means as used to randomly provide a wager for the first phase as described above. It is noted that since the wagering data may be the same in the second phase of the lottery as the first phase, as described above regarding the clarity of claims 15-16, and the concluding data may be the same in the second phase as the first phase by virtue of the participants causing a similar conclusion in the different phases of the competition, the lottery results of the second lottery are determined by the concluding data.

4. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hannan (US 2004/0029627) in view of Champion (US 4,962,950) and further in view of Perlin (US 2004/0043810).

Re claim 30: Hannan discloses all the features of the claimed invention except for the competition being an entertainment competition.

Perlin teaches a system and contest wherein various activities and competitions are managed by the system (Abstract and par. 21). Among the list of activities and competitions are sporting events and entertainment award competitions (par. 21). Though Perlin'810 does not appear to explicitly use competitions as part of a method or system for determining the winner of a lottery, Perlin'810 teaches that entertainment award competitions are competitions and that they may be used in a similar fashion to sporting events within a system because of the both feature individuals or teams with certain individuals or teams winning in an event. Perlin'810 appears to teach the use of entertainment award competitions in addition to sporting event competitions for the purpose of appealing to a wider range of people who may enjoy entertainment events rather than sporting events.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Hannan'627 with a competition that is an entertainment award competition as taught by Perlin'810 for the purposes of allowing the lottery game system and method to appeal to a wider range of potential players.

Response to Arguments

5. Applicant's arguments have been considered but are moot in view of the new grounds of rejection.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lorraine discloses a number-combination selector; Snyder discloses a random

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number selection device; Cannon discloses a method and apparatus by which a player can win wagers on other games or events.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adetokunbo O. Torimiro whose telephone number is (571) 270-1345. The examiner can normally be reached on Mon-Fri (8am - 4pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

/A. O. T./

Examiner, Art Unit 3714

/Robert E Pezzuto/

Supervisory Patent Examiner, Art Unit 3714